

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1321

Introduced by Assembly Member Eng

February 27, 2009

An act to ~~amend Section 75125 of~~ *add Division 13.6 (commencing with Section 21200)* to the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as amended, Eng. Environment: ~~Strategic—Growth Council.~~ *The Advance Infrastructure Mitigation Program Act.:*

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would enact the Advance Infrastructure Mitigation Program Act, which would establish the Advance Infrastructure Mitigation Program, including defining terms for that purpose. The bill would authorize the Natural Resources Agency to administer and implement the program by taking specified actions. Those actions would include preparing, approving, and implementing regional advance mitigation plans, the contents of which the bill would specify, for planned infrastructure projects, as defined, identified by an infrastructure planning agency, as defined. The bill would specify that the purpose of a regional advance mitigation plan is to provide effective mitigation and conservation of natural resources and natural processes on a

landscape, regional, or statewide scale, to expedite the environmental review of planned infrastructure projects, and to facilitate the implementation of measures to mitigate the impacts of those projects by identifying and implementing mitigation measures in advance of project approval. The bill also would authorize the agency to acquire, restore, manage, monitor, and preserve lands, or fund those actions, in accordance with an approved regional advance mitigation plan or as otherwise specified, and to establish or fund the establishment of mitigation banks and conservation banks and purchase credits at those types of banks as specified. The bill would authorize the agency to take other specified actions with respect to mitigation credits or values created or acquired under the program.

The bill would authorize an infrastructure planning agency to identify planned infrastructure projects for the purposes of including the projects in a regional advance mitigation plan or for other advance mitigation under the program, and would authorize the agency to enter a memorandum of understanding or other agreement with an infrastructure planning agency for specified purposes of the program.

The bill would establish the Advance Infrastructure Mitigation Fund in the State Treasury. Upon appropriation by the Legislature, the bill would require moneys in the fund to be used by the agency to administer and implement the program.

The bill would specify that the program is intended to improve the efficiency and efficacy of mitigation only and is not intended to supplant the requirements of CEQA or any other environmental law.

~~The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative statute approved by the voters at the November 7, 2006, statewide general election makes about \$5.4 billion in bond funds available for safe drinking water, water quality and supply, flood control, natural resource protection, and park improvements.~~

~~Existing law establishes the Strategic Growth Council and appropriates \$500,000 from the funding provided by the initiative to the Natural Resources Agency to support the council and its activities. Existing law requires the council to take certain actions with regard to coordinating programs of member state agencies to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006, encourage~~

~~sustainable land use planning, and revitalize urban and community centers in a sustainable manner.~~

~~This bill would also require the council to develop strategies that would allow for streamlined and effective mitigation of infrastructure projects.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Division 13.6 (commencing with Section 21200)*
2 *is added to the Public Resources Code, to read:*

3
4 *DIVISION 13.6. ADVANCE INFRASTRUCTURE MITIGATION*
5 *PROGRAM ACT*

6
7 *CHAPTER 1. GENERAL*
8

9 21200. *This division shall be known, and may be cited, as the*
10 *Advance Infrastructure Mitigation Program Act.*

11 21201. (a) *The purpose of this division is to improve the*
12 *success and effectiveness of actions implemented to mitigate the*
13 *natural resource impacts of future infrastructure projects by*
14 *establishing the means to implement those actions well before the*
15 *infrastructure projects are constructed. The advance identification*
16 *and implementation of mitigation actions also will streamline the*
17 *delivery of infrastructure projects by anticipating mitigation*
18 *requirements for planned infrastructure projects and avoiding or*
19 *reducing delays associated with environmental permitting. By*
20 *identifying regional or statewide conservation priorities and by*
21 *anticipating the impacts of planned infrastructure projects on a*
22 *regional or statewide basis, mitigation actions can be designed to*
23 *protect and restore California's most valuable natural resources*
24 *and also facilitate environmental compliance for planned*
25 *infrastructure projects on a regional scale.*

26 (b) *This division is not intended to create a new environmental*
27 *permitting or regulatory program or to modify existing*
28 *environmental laws or regulations, nor is it intended to address*
29 *all mitigation that may be required for planned infrastructure*
30 *projects. Instead, it is intended to provide a way in which to*

1 *anticipate and fulfill the requirements of existing state and federal*
2 *environmental laws that protect fish, wildlife, plant species, and*
3 *other natural resources more efficiently and effectively.*

4 *21202. The Legislature finds and declares all of the following:*

5 *(a) The minimization and mitigation of environmental impacts*
6 *is ordinarily handled on a project-by-project basis, usually at the*
7 *end of a project's timeline and without guidance regarding*
8 *regional or statewide conservation priorities.*

9 *(b) The cost of critical transportation, flood control, and other*
10 *infrastructure projects often escalates because of permitting delays*
11 *that occur when appropriate conservation and mitigation measures*
12 *cannot easily be identified and because the cost of these measures*
13 *often increases between the time a project is planned and funded*
14 *and the time mitigation is implemented.*

15 *(c) Addressing biological conservation and mitigation needs*
16 *early in a project's timeline, during project design and*
17 *development, can reduce costs and allow natural resources*
18 *conservation to be integrated with project siting and design.*

19 *(d) When the Department of Transportation, the Department of*
20 *Water Resources, and other public agencies are able to anticipate*
21 *the mitigation needs for planned infrastructure projects, they can*
22 *meet those needs in a more timely and cost-effective way, by using*
23 *long-range regional advance mitigation planning.*

24 *(e) Working with state and federal resource protection agencies,*
25 *the Department of Transportation, the Department of Water*
26 *Resources, and other public agencies could identify, conserve,*
27 *and, where appropriate, restore lands for mitigation of numerous*
28 *projects early in the projects' timelines, thereby allowing public*
29 *funds to stretch further by acquiring habitat at a lower cost and*
30 *avoiding environmental permitting delays.*

31 *(f) Regional advance mitigation planning can provide an*
32 *effective means of facilitating delivery of state and federal*
33 *economic stimulus funding to infrastructure projects while ensuring*
34 *more effective natural resource and wildlife conservation.*

35 *(g) Regional advance mitigation planning is needed to direct*
36 *mitigation funding for transportation, flood control, and energy*
37 *projects to agreed upon conservation priorities and to the creation*
38 *of habitat reserves and recreation areas that enhance the*
39 *sustainability of human and natural systems by protecting or*

1 *restoring connectivity of natural communities and the delivery of*
2 *ecosystem services.*

3 *(h) Regional advance mitigation planning can facilitate the*
4 *implementation of climate change adaptation strategies both for*
5 *ecosystems and California's economy.*

6 *(i) Regional advance mitigation planning can enable the state*
7 *to protect, restore, and recover its natural capital as it strengthens*
8 *and improves its infrastructure.*

9 *21203. The Legislature intends to do all of the following by*
10 *enacting this division:*

11 *(a) Facilitate delivery of infrastructure projects while ensuring*
12 *more effective natural resource and wildlife conservation.*

13 *(b) Develop effective strategies to improve the state's ability to*
14 *meet mounting demands for transportation, flood control, and*
15 *energy services, and to maximize conservation and other public*
16 *benefits.*

17 *(c) Achieve conservation objectives of statewide and regional*
18 *importance by coordinating local, state, and federal funded natural*
19 *resource conservation efforts with mitigation actions required for*
20 *impacts from public infrastructure projects.*

21 *(d) Create administrative, governance, and financial incentives*
22 *and mechanisms necessary to ensure that measures required to*
23 *minimize or mitigate impacts from infrastructure projects will*
24 *serve to achieve regional or statewide natural resource*
25 *conservation objectives.*

26
27 *CHAPTER 2. DEFINITIONS*
28

29 *21204. For the purposes of this division, the following terms*
30 *have the following meanings:*

31 *(a) "Acquire" and "acquisition" mean, with respect to land,*
32 *acquisition of fee title or purchase of a conservation easement,*
33 *that protects conservation and mitigation values on the land in*
34 *perpetuity.*

35 *(b) "Agency" means the Natural Resources Agency.*

36 *(c) "Infrastructure planning agency" means the Department of*
37 *Transportation, the Department of Water Resources, a*
38 *metropolitan planning organization, a regional transportation*
39 *planning agency, or other public agency that implements*
40 *infrastructure projects.*

1 (d) “Infrastructure project” means the construction, repair, or
2 modification of a transportation, flood control, energy, or water
3 facility.

4 (e) “Planned infrastructure project” means a project that the
5 Department of Transportation, the Department of Water Resources,
6 or other public agency has concluded is reasonably likely to be
7 constructed within 20 years and that has been identified to the
8 agency for purposes of this division. A planned infrastructure
9 project may include, but is not limited to, projects that have been
10 proposed for approval or approved.

11 (f) “Program” means the Advance Infrastructure Mitigation
12 Program implemented pursuant to this division.

13 (g) “Regional advance mitigation plan” means a regional or
14 statewide plan developed in accordance with this division that
15 estimates the potential future compensatory mitigation
16 requirements for one or more planned infrastructure projects and
17 identifies mitigation projects, sites, or credits that would fulfill
18 some or all of those requirements.

19 (h) “Regulatory agency” means a state and federal natural
20 resource protection agency with regulatory authority over planned
21 infrastructure projects. A regulatory agency includes, but is not
22 limited to, the Department of Fish and Game, California regional
23 water quality control boards, the United States Fish and Wildlife
24 Service, the National Marine Fisheries Service, the United States
25 Environmental Protection Agency, and the United States Army
26 Corps of Engineers.

27
28 *CHAPTER 3. ADVANCE INFRASTRUCTURE MITIGATION PROGRAM*
29

30 21205. This division establishes the Advance Infrastructure
31 Mitigation Program to fulfill the purposes of this division. The
32 agency may do any of the following to administer and implement
33 the program:

34 (a) Prepare, approve, and implement regional advance
35 mitigation plans for one or more planned infrastructure projects
36 identified pursuant to Section 21207. The purpose of a regional
37 advance mitigation plan is to provide effective mitigation and
38 conservation of natural resources and natural processes on a
39 landscape, regional, or statewide scale, to expedite the
40 environmental review of planned infrastructure projects, and to

1 *facilitate the implementation of measures to mitigate the impacts*
2 *of those projects by identifying and implementing mitigation*
3 *measures in advance of project approval.*

4 *(b) Acquire, restore, manage, monitor, and preserve lands, or*
5 *fund the acquisition, restoration, management, monitoring, and*
6 *preservation of lands, in accordance with a regional advance*
7 *mitigation plan approved by the agency pursuant to this division.*

8 *(c) Acquire, restore, manage, monitor, and preserve lands, or*
9 *fund the acquisition, restoration, management, monitoring, and*
10 *preservation of lands, outside of an approved regional advance*
11 *mitigation plan if the agency determines that those actions would*
12 *conserve or create biological values that are appropriate to*
13 *mitigate the estimated impacts of one or more planned*
14 *infrastructure projects identified pursuant to Section 21207.*

15 *(d) Establish mitigation banks or conservation banks, or fund*
16 *the establishment of mitigation banks or conservation banks, in*
17 *accordance with applicable state and federal standards. The*
18 *agency also may purchase credits at mitigation banks and*
19 *conservation banks if the agency determines that the credits*
20 *provide biologically appropriate mitigation for one or more*
21 *planned infrastructure projects identified pursuant to Section*
22 *21207.*

23 *(e) Establish the type and quantity of mitigation credits or values*
24 *created under the program by obtaining the approval of those*
25 *credits or values from relevant regulatory agencies. This division*
26 *is not intended to supplant or abrogate the authority of a regulatory*
27 *agency to determine mitigation requirements under state or federal*
28 *environmental laws or to determine the type or quantity of*
29 *mitigation credits or values that may be used to fulfill those*
30 *requirements.*

31 *(f) Use, or allow infrastructure planning agencies to use,*
32 *mitigation credits or values created or acquired under the program*
33 *to fulfill the mitigation requirements of planned infrastructure*
34 *projects if the infrastructure planning agency reimburses the*
35 *program for all costs of creating the mitigation credits or values,*
36 *as determined by the agency.*

37 *21206. A regional advance mitigation plan shall do all of the*
38 *following:*

39 *(a) Use geographic information system analysis, field surveys,*
40 *and principles of conservation planning to estimate the nature and*

1 extent of mitigation requirements of identified planned
2 infrastructure projects on a regional or statewide basis.

3 (b) Propose measures to avoid or minimize the adverse
4 environmental impacts of planned infrastructure projects,
5 including, where appropriate, the identification of project
6 alignments and design features that would avoid or minimize those
7 impacts.

8 (c) Anticipate and provide for compensatory mitigation for
9 planned infrastructure projects' impacts on natural resources and
10 natural processes by identifying needed mitigation and, to the
11 extent practicable, identifying suitable mitigation lands.

12 (d) Identify and provide for the preservation of wildlife
13 movement corridors and habitat connectivity to avoid ecological
14 fragmentation and to enable ecosystem adaptation to climate
15 change.

16 (e) Consider impacts on water quality and riparian habitat,
17 rare plant species, sensitive species, and declining natural
18 communities including oak woodlands, vernal pools, native
19 grasslands, and serpentine habitat.

20 (f) Identify the amount of greenhouse gas reductions estimated
21 to be achieved through the regional advance mitigation plan.

22 (g) Provide for endowments to manage and monitor acquired
23 or protected lands, as necessary.

24 (h) Where available and biologically appropriate, provide for
25 the purchase of mitigation credits at mitigation banks or
26 conservation banks or for the payment of mitigation fees within
27 established mitigation programs.

28 (i) Analyze the cost effectiveness of available mitigation
29 alternatives both in terms of environmental benefits and improved
30 project delivery and certainty.

31 (j) Include measurable performance objectives and a monitoring
32 and evaluation program.

33 21207. (a) An infrastructure planning agency may identify
34 planned infrastructure projects for the purpose of including those
35 projects in a regional advance mitigation plan or for other advance
36 mitigation under the program. The infrastructure planning agency
37 shall provide an analysis and estimate of the projects' direct,
38 indirect, and cumulative impacts. The analysis and estimate shall
39 include all available relevant information regarding those impacts
40 and the analysis shall be at a level of detail commensurate with

1 *the available relevant information. Detailed analysis shall not be*
2 *required where relevant detailed information about the projects'*
3 *impacts is not available.*

4 *(b) The agency may enter a memorandum of understanding or*
5 *other agreement with an infrastructure planning agency to do all*
6 *of the following:*

7 *(1) Specify terms consistent with this division under which the*
8 *program will provide advance mitigation for the identified planned*
9 *infrastructure projects.*

10 *(2) Establish guidelines for communication and sharing of*
11 *relevant information necessary to optimize coordination and*
12 *collaboration between the agency and the infrastructure planning*
13 *agency.*

14 *(3) Establish guidelines for strategically locating mitigation*
15 *and conservation sites to maximize the biological benefit and*
16 *conservation value to target species, habitats, and aquatic*
17 *resources.*

18 *21208. The Advance Infrastructure Mitigation Fund is*
19 *established in the State Treasury. Upon appropriation by the*
20 *Legislature, all moneys in the fund shall be used by the agency to*
21 *administer and implement the program. All moneys provided by*
22 *infrastructure planning agencies to reimburse program*
23 *expenditures pursuant to subdivision (f) of Section 21205 shall be*
24 *deposited in the fund.*

25 *21209. The program is intended to improve the efficiency and*
26 *efficacy of mitigation only and is not intended to supplant the*
27 *requirements of the California Environmental Quality Act (Division*
28 *13 (commencing with Section 21000)) or any other environmental*
29 *law. The identification of planned infrastructure projects and the*
30 *identification of mitigation projects or measures for planned*
31 *infrastructure projects under this division does not imply or require*
32 *approval of those projects for purposes of the California*
33 *Environmental Quality Act (Division 13 (commencing with Section*
34 *21000)).*

35 ~~SECTION 1. Section 75125 of the Public Resources Code is~~
36 ~~amended to read:~~

37 ~~75125. The council shall do all of the following:~~

38 ~~(a) Identify and review activities and funding programs of~~
39 ~~member state agencies that may be coordinated to improve air and~~
40 ~~water quality, improve natural resource protection, increase the~~

1 availability of affordable housing, improve transportation, meet
2 the goals of the California Global Warming Solutions Act of 2006
3 (Division 25.5 (commencing with Section 38500) of the Health
4 and Safety Code), encourage sustainable land use planning, develop
5 strategies that would allow for streamlined and effective mitigation
6 of infrastructure projects, and revitalize urban and community
7 centers in a sustainable manner. At a minimum, the council shall
8 review and comment on the five-year infrastructure plan developed
9 pursuant to Article 2 (commencing with Section 13100) of Chapter
10 2 of Part 3 of Division 3 of the Government Code and the State
11 Environmental Goals and Policy Report developed pursuant to
12 Section 65041 of the Government Code.

13 (b) Recommend policies and investment strategies and priorities
14 to the Governor, the Legislature, and to appropriate state agencies
15 to encourage the development of sustainable communities, such
16 as those communities that promote equity, strengthen the economy,
17 protect the environment, and promote public health and safety,
18 and is consistent with subdivisions (a) and (c) of Section 75065.

19 (c) Provide, fund, and distribute data and information to local
20 governments and regional agencies that will assist in developing
21 and planning sustainable communities.

22 (d) Manage and award grants and loans to support the planning
23 and development of sustainable communities, pursuant to Sections
24 75127, 75128, and 75129. To implement this subdivision, the
25 council may do all of the following:

26 (1) Develop guidelines for awarding financial assistance,
27 including criteria for eligibility and additional consideration.

28 (2) Develop criteria for determining the amount of financial
29 assistance to be awarded. The council shall award a revolving loan
30 to an applicant for a planning project, unless the council determines
31 that the applicant lacks the fiscal capacity to carry out the project
32 without a grant. The council may establish criteria that would allow
33 the applicant to illustrate an ongoing commitment of financial
34 resources to ensure the completion of the proposed plan or project.

35 (3) Provide for payments of interest on loans made pursuant to
36 this article. The rate of interest shall not exceed the rate earned by
37 the Pooled Money Investment Board.

38 (4) Provide for the time period for repaying a loan made
39 pursuant to this article.

1 ~~(5) Provide for the recovery of funds from an applicant that fails~~
2 ~~to complete the project for which financial assistance was awarded.~~
3 ~~The council shall direct the State Controller to recover funds by~~
4 ~~any available means.~~

5 ~~(6) Provide technical assistance for application preparation.~~

6 ~~(7) Designate a state agency or department to administer~~
7 ~~technical and financial assistance programs for the disbursing of~~
8 ~~grants and loans to support the planning and development of~~
9 ~~sustainable communities, pursuant to Sections 75127, 75128, and~~
10 ~~75129.~~

11 ~~(e) No later than July 1, 2010, and every year thereafter, provide~~
12 ~~a report to the Legislature that shall include, but is not limited to,~~
13 ~~all of the following:~~

14 ~~(1) A list of applicants for financial assistance.~~

15 ~~(2) Identification of which applications were approved.~~

16 ~~(3) The amounts awarded for each approved application.~~

17 ~~(4) The remaining balance of available funds.~~

18 ~~(5) A report on the proposed or ongoing management of each~~
19 ~~funded project.~~

20 ~~(6) Any additional minimum requirements and priorities for a~~
21 ~~project or plan proposed in a grant or loan application developed~~
22 ~~and adopted by the council pursuant to subdivision (e) of Section~~
23 ~~75216.~~